IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 11 of 1999

in

MISC.CIVIL APPLICATIONNo 16 of 1999

with

CIVIL APPLICATION No 97 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RELIANCE INUSTRIES LTD.

Versus

OWNERS AND ALL PERSONS INTERESTED IN VESSEL M.T."EMERALD SKY

Appearance:

1. O.J.APPEAL No. 11 of 1999

MR UR GANDHI for Appellant No.

Mr.Mihir Thakore with Mr.Buch & Mr.Jay Amin for SINGHI & BUCH ASSO. for Respondent No. 1 with

Mr.Rahul Narichania & Mr.Samir Kazi,for Mulla &
Mulla & Carigie Blunt & Caroe.
MS PAURAMI B SHETH for Respondent No. 3

2. CIVIL APPLICATION No. 97 of 1999
MR UR GANDHI for Appellant No.
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/05/2004

CAV JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The present appeal under Clause 15 of the Letters Patent preferred by the appellant- original plaintiff no.1 is directed against the order dated 12.3.1999 passed by the learned Single Judge in M.C.A. No. 16 of 1999 filed by the defendants in Admiralty Suit No. 5 of 1998. The learned Judge, in para 12, passed the following order:

"12. In view of the aforesaid discussion, it is ordered as under:

(1) The plaintiffs are given time of one month from today to get their insurers to survey or resurvey the old SBM with or without dismantling the concerned parts of the SBM. In any case, after one month from today, the defendants, their surveyors and repair Engineers shall be permitted by the plaintiffs to have the detailed inspection of the old SBM consistent with the claim of the plaintiffs or their insurers that the defendants cannot, in the process destroy or cause any further damage to the old SBM. Needless to say that the defendants alone shall bear the expenses for any facilities which may be required to be provided by the plaintiffs to the defendants, their surveyors or repair Engineers for such inspection. It also goes without saying that after the defendants/ their surveyors/ service Engineers dismantle any part of the old SBM consistent with the claim of the plaintiffs or their insurers as stated

above, it would be for the defendants to put right the old SBM in the condition prior to dismantling.

(2) Prayers (B) and (C) made in this application are not granted."

The parties to the present appeal shall be referred by their original status, namely the plaintiffs and the defendants.

2. The plaintiffs, in the suit preferred by them while narrating the facts have stated that they installed a new Single Buoy Mooring (in short, 'SBM') at Hajira. The vessel "EMERALD SKY" met with an accident and caused damage to the SBM. The plaintiffs accordingly claimed following reliefs in the Admiralty Suit filed by them.

"(a): to make an order of condemnation of the defendant vessel in favour of the plaintiffs or in the alternative, in the sum of US $ 19.76 Million equivalent to Rs. 83.98 crores (as per particulars in Ex.H) along with interest thereon for purchasing installing the new SBM.

(b): to make an order of condemnation of the defendant vessel in favour of the 1st plaintiff in the sum of Rs. 160 crores (being the damages by way of loss of revenue and other like losses as per particulars in Ex.G) along with interest thereon.

(c): to make an order of condemnation of the defendant vessel in favour of the 2nd plaintiff in the sum of Rs. 133.00 lacs (being the damages by way of loss of revenue and other like losses) along with interest."

3. In the pending suit, the defendant, as stated above, filed an application being Misc. Civil Application No. 16 of 1999 inter alia contending that after filing of the suit, the defendants called upon the plaintiffs to give inspection of old SBM and also to give access to the Surveyor and Repair Engineers of the defendants to witness and monitor the installation process of the new SBM. It is further stated that the representatives of the defendants were previously allowed to inspect the damaged SBM and upon such inspection, they were to carry out the casual estimate of general condition of the SBM, but the degree of damage suffered

could not be ascertained properly as certain dismantling process had to be employed. According to the defendants, such process is not destructive and it is necessary for the Surveyors and Repair Engineers to have access to all the SBM compartments. During the earlier inspection, part of the instruments were obstructed which could not be removed without crane which was not available and without further inspection, it is not possible to ascertain whether the damaged SBM is a constructive total loss as claimed by the plaintiffs. The defendants, therefore, requested the plaintiffs to provide access for their Surveyors M/s London Offshore Consultants (LOC) to attend on board the crane barge throughout her work at Hazira in order to monitor the work and ensure that the costs were minimised on the ground that the plaintiffs have claimed cost of the new SBM at US $ 14.71 million and have also claimed installation costs of US $ 5.05 million. Since the requests of the defendants were not accepted, the application was filed by the defendants for the following reliefs.

"(a): to direct the plaintiffs to give the defendants and their Surveyors and Repair Engineers free and unrestricted access to inspect and survey the damaged SBM immediately;

(b): to direct the plaintiffs to allow the defendants and their Surveyors and Repair Engineers free and unrestricted access immediately to witness, supervise and monitor the installation process in the new SBM;

(c): to direct the plaintiffs to furnish to the defendants the following documents immediately:

(i): Stability Book;

(ii): Principal Drawings of the Buoy."

4. The plaintiffs resisted the application by filing affidavit of the Additional General Manager (Legal). As far as the first prayer in the application was concerned, the plaintiffs inter alia stated that the old SBM was insured by their Insurance Company and the Insurance Company is yet to settle the damages suffered by the plaintiffs on account of damage caused to the SBM and until the Insurance Company settles the claim dismantling old SBM would expose the plaintiffs to difficulties in settlement and recovery of their claims with/ from the Insurance Company as dismantling process may cause further damage to the SBM.

5. With respect to the second prayer, it was submitted that the defendants were trying to collect evidence through the present application which was not permissible; only the old SBM is the subject matter of the suit and the damages claimed by the plaintiffs in the form of costs of process of installation of the new SBM cannot be said to be a property which is subject matter of the suit as the suit is for damages and the plaintiffs would prove the amounts which they are entitled to claim from the defendants.

6. With respect to the prayer to direct the plaintiffs to give them inspection of the Stability Book, it was stated that the request of the defendants for access to the Stability Book was far from clear. The Stability Book is used in connection with ships and is a set of calculations made by the Classification Society and certified by American Bureau of Shipping. At the very inception, the SBM is certified by the American Bureau of Shipping (Classification Society) that the same is functional and fulfils the requirements stipulated by the American Bureau of Shipping. Thereafter no Stability Book is maintained in respect of SBM. No such Stability Book is maintained by the plaintiffs.

7. "Principal Drawings" of the Buoys are "Proprietary Information" of IMODCO which had designed and supplied the equipment for the SBM in question. These drawings cannot be disclosed except after permission from the Classification Society and the American Bureau of Shipping which in turn may request IMODCO to provide such access and it is entirely upto IMODCO whether to disclose these drawings or otherwise. It was, therefore, submitted that the defendants are not entitled to the documents mentioned in the application.

8. The learned Single Judge, after hearing the learned Counsel appearing for the parties, as stated above, passed the impugned order.

9. Learned Senior Counsel Mr. J.J.Bhatt appearing for the plaintiffs fairly stated that the plaintiffs will have no objection as far as the first part of the order is concerned. He has further stated that the plaintiffs will have no objection if the inspection of the old SBM by the Surveyors/ Repair Engineers, Insurers for the purpose of survey or resurvey without dismantling the concerned parts of the SBM is carried out. He,however, submitted that for the purpose of carrying out inspection, the defendants cannot in the process, destroy or cause any further damage to the old SBM. Mr. Bhatt,

however, strongly argued that the last part of the directions issued by the learned Single Judge, namely that after the defendants/ their Surveyors/ Service Engineers dismantle any part of the old SBM consistent with the claim of the plaintiffs or their insurer, it would be for the defendants to put right the old SBM in the condition prior to dismantling. According to the learned Counsel, the directions issued in the first and the second part of the order are not consistent with each other inasmuch as having accepted that the defendants cannot in the process of inspection destroy or cause any further damage to the SBM, the learned Judge ought to have refused inspection and could not have directed the defendants to put right the old SBM in the condition prior to dismantling. According to the learned Counsel, once the old SBM is dismantled, it is not possible to put right the old SBM in the condition prior to dismantling. The learned Counsel further submitted that allowing the dismantling of old SBM at this stage without Insurance Company settling their claim will cause prejudice to the plaintiffs in settling their claim for damages with the Insurance Company.

10. Learned Senior Counsel Mr. Mihir Thakore appearing for the defendant no.1, while supporting the reasonings of the learned Judge and by placing reliance on the three affidavits filed by Mr. Peter Holloway, the Managing Director of London Offshore Consultancy Ltd., submitted that for the purpose of ascertaining damage to the SBM, invasive survey/ pressure test of SBM is absolutely necessary. Mr. Thakore also raised preliminary contention regarding the maintainability of the present appeal by contending that as the present appeal is directed against the interim order, under Order XLIII Rule 1 of Civil Procedure Code, when the appeal is not competent against the interim order, the Letters Patent Appeal is certainly not competent against the order of inspection under Order XLIII Rule 1 of C.P.C. He submitted that the rights of the parties are not decided finally and this being an interlocutory order, this appeal under clause 15 of the Letters Patent is not maintainable.

11. It may be stated that during the pendency of appeal, the Division Bench of this Court (Coram: R.Balia and A.R.Dave,JJ.) on 10.5.1999, without prejudice to the respective contentions of the parties, directed that the appellant shall permit the respondents to have visual inspection of the disputed damaged SBM and to have its measurements in the position as it is, without having recourse to any alterations in the site whether by way of

dismantling or erecting. The Division Bench further directed that at least 12 hours notice shall be served on the plaintiffs by the defendants wanting inspection giving details of the subject and the manner in which survey was to be carried out by the defendants. Access to all places through existing ingress was permitted. It was further observed in the said order that it was pointed out by the appellants that because of the presentloading/ unloading of the hyper sensitive material taking place at site, it may not be possible to operate any photographic instruments. In view of this, it was clarified that if the defendants wanted to have any photographs, they shall give a prior notice of 72 hours to the plaintiffs and in case there was any difficulty in permitting photographs at the site, the same shall be conveyed to the defendants in writing by pointing out the approximate period for which such activities were going to continue in order to facilitate the defendants to renew their request for having any photograph at the site after expiry of that period subject to same condition.

12. Thereafter again the Division Bench consisting of D.M.Dharmadhikari, C.J.(as he then was) and P.B.Majmudar,J., on 21.3.2001 passed the following order:

> "After hearing the learned Counsel appearing for the parties,in our opinion, an agreed programme may be chalked out involving also the insurance company for inspection of the SBM and for considering the necessity of dismantling and reassembling the same. Learned Counsel for the parties seek time to take instructions in the matter. Put up on 11th April 2001."

Pursuant to the said directions, it appears that number of meetings were held to chalk out the procedure for inspection of MPDU under the supervision of IMODCO at Dynamic Machine at Los Angeles. It was also discussed that the detailed inspection of the other parts of SBM should be carried out at appropriate machine shop at Mumbai. The parties also considered the necessity of dismantling and reassembling the SBM.

13. Mr. Peter Holloway, the Managing Director of London Offshore Consultants Ltd., Independent Marine and Engineering Consultants filed three affidavits in the present appeal. He possessed the necessary technical knowledge and expertise to give his opinion on the process and requisites of carrying out an invasive survey and pressure test of the SBM. In the first affidavit, he has inter alia stated that invasive survey/ pressure test

must be carried out to fully ascertain the damage to the SBM and the said test be carried out in India. In para 11, he offered comments on the feasibility and convenience of carrying out survey in India as set out thereunder.

(a) The immediate and prima facie advantage of carrying out the invasive survey in India is that the considerable transportation costs involved in mobilising the SBM from India to the facilities suggested by RIL, i.e. IMODCO workshop in California, USA or Noel-Imac, Abu Dhabi, would not be incurred The cost involved in transporting the SBM to the IMODCO workshop in California, USA would be in the region of US $ 250000; as opposed to a cost in the region of US$ 40,000 for shipping it to a yard in India, or even less if the survey takes place in or around RIL's Jamnagar complex.

(b) Secondly, as described above, the inspection is a simple one and there is no technical reason for the SBM to be sent out of India for the invasive survey. The main purpose of the inspection is to simply ascertain the extent of impact and submersion damage. This should be readily visible on the opening of the MPDU top. The removal of the upper cover will permit the immediate inspection and measurement of the upper bearings and seals. Further dismantling to reach the lower bearings and seals will find them in the same condition as the upper components because they share the same container i.e. the MPDU.

(c) The increased costs of sending the SBM out of India for the survey are, therefore, completely disproportionate to the costs of the exercise itself. The SBM was sufficiently damaged due to its submersion that an invasive survey consisting of the opening of the MPDU is likely to indicate that the bearings and the seals alone were damaged nearly beyond economical repair.

In addition, the MPDU will have corroded further with a content of seawater for nearly four years due to exposure to diurnal temperature ranges of 15 C- 45 C over the several intervening seasons. The seals and bearings inside the MPDU are also not designed to be exposed to the corrosive effects of salt water.

The invasive survey is, therefore, likely to show that following submersion the MPDU was at least damaged to the point of requiring new bearings and seals. For whatever purpose the SBM/MPDU might be used in the future no end user would refurbish the units without replacing the seals and bearings. These are estimate to cost approximately US$ 350000.

It is not cost effective to carry out a survey at a cost in excess of US$ 300000 to prove that the unit needs, in addition to measuring, cleaning and NDT (Non-Destructive Testing, usually by dye penetration or ultrasound) testing of other components, repair items costing some 85% of the cost of the survey itself. These items would have been damaged by the submersion itself, not by the impact.

(d) The combined cost of the survey and complete bearing and seal refurbishment already reaches US$ 650000, in excess of what the seven year old refurbished MPDU might be considered to be worth on the open market, let alone to the smaller global market of naptha/ paraxylene SBM operators. As such it is a pointless waste of costs to incur the extra costs to transport the SBM or MPDU out of India for invasive testing.

(e) I also do not agree with any contention that the MPDU should not be opened up in India for risk of further damage. I consider that in fact, the damage that will direct the course of the future of the MPDU can and should be ascertained in Jamnagar, where I note RIL, according to correspondence received from them dated 23rd August 2001 RIL have found a suitable site to dismantle the buoy within 2 kms. of its current location.

(f) I further understand that IMODCO is allegedly resisting the proposal to carry out the requisite tests outside their own facilities in California or those in Dubai/Abu Dhabi on the ground that it would release their proprietary information. I disagree with the contention by IMODCO that the potential for the release of proprietary information requires the unit to be transported to California or Dubai. Whilst it is true that workshop or covered conditions are necessary for carrying out requisite tests, it is unnecessary

to have the SBM transported to California or Dubai. The design of this unit is at least seven years old. It is a design which has few applications as far as I am aware anywhere else in the world. The majority of units built now have the turntable bearings integral with the MPDU/ Swivel whereas the Hazira No.3 unit is of simple design and has the unfavoured bogey wheel system which is used on very few SBMs around the world. The SBM is also routinely opened up for inspection by qualified inspectors who are not necessarily employed by IMODCO.

(g) SBM units are however built in a number of facilities worldwide by builders with associations with IMODCO/SBM. The OPL 'Single Point Moorings of the World' guide, 5th Edition 1999, used throughout the industry, lists 15 CALM buoy units, of which the Hazira unit is one, operating in Indian waters (annexed and marked Ex. 'PH2). Eight of these units were designed by IMODCO of which three are noted to have been built in India, three in Abu Dhabi, none were built in California. They are not secret facilities, nor are the labourers who build them sworn to secrecy. I do not doubt that the design was once patented, but that would be for protection from copying, not for means of keeping from the very public domain in which they are built any significant scientific or mechanical proprietary detail. In any event, every detail of the patent, which has expired, was freely available to the general public from the US Patent Office. The technology of the seals of an SBM are not cutting edge science. They are ordered from independent manufacturers as and when required for the particular size and specialist cargo types that the subject unit might be transferring. From what I understand RIL/ IMODCO interest in the MPDU is of recent origin whereas the unit has been standing in the opn, with the high probability of being scrapped for nearly four years as understood from RIL's own senior marine superintendent following the non-invasive survey of July 1999 in Jamnagar. IMODCO's interest in the SBM and their insistence on its return to California or Dubai is questionable if over three years previously they declared it as scrap.

(h) As the MPDU has been left unattended outside in

Jamnagar, RIL must be aware that its condition does not justify its transportation to California or Dubai in order to carry out the invasive survey. RIL and IMODCO's argument that proprietary commercial detail might be released by opening the unit in India is inconveniencing. The majority of the equipment inside the MPDU is made by outside suppliers and IMODCO/SBM merely install the items manufactured to order by organisations such as Timken. The design of this unit is not commercially in demand. The same OPL Publication referred to above indicates that the majority of CALM buoy units are fitted with the internal bearings supporting the turntable. As stated earlier, this unit was designed at least seven years prior to the incident. If the design was such as to be cutting edge technology, the interior of this unit would now be obsolete and its interior of no interest to any commercial interests."

In para 16 of the affidavit, he has stated that invasive survey is necessary for owners to fully ascertain the damage to the SBM. India is the most suitable and economically expedient location for the invasive survey of the SBM and there is no valid reason for sending the SBM outside India for the invasive survey. Upon opening the SBM, if the MPDU is found in a refurbishable condition, it can always be sent to yards outside India for repairs (if such repairs cannot be carried out in India).

14. In the second affidavit, the said deponent has tried to explain how to carry out invasive survey/ pressure test. Paras 4 and 5 of the said affidavit are relevant and they are reproduced as under:

"4. The survey requested by Owners is a simple exercise. As explained at paragraph 6 of my First Affidavit, the survey consists of a pressure test and the invasive survey. After completion of the pressure test, the invasive survey necessasrily requires the opening up of the SBM's Multi Product Distribution Unit (MPDU). The MPDU is a simple device consisting of a steel liquid tight chamber with bearings to allow it to rotate or swivel and seals that allow it to rotate without leakage. Any competent mechanic could work on such a simple unit and open it up for the purposes of the invasive survey.

5. The key steps in the invasive survey are as follows:

a: Survey unit and stands to ensure that it is stable;

b: Create safe access to the top of the unit by means of scaffolding;

c: Clean the inside of the unit and ensure all compartments are gas free;

d: Cut away the bogey arms, pipes and damaged steel that prevent clear access to the MPDU top.

e: Release the ring of bolts that hold down the top cover. Remove top cover. Survey top bearing and steel for corrosion.

f: Remove top bearings and seals, inspect inner chambers.

g: Remove lower bearings and seals and inspect for corrosion;

h: Replace top cover. "

15. In the third affidavit, again the deponent further clarified the key steps in the invasive survey outline in para 5 of the second affidavit. Paras 10 to 15 are relevant for our purpose and are reproduced as under:

"10. At this stage, a judgment can be made as to the suitability of the MPDU for repair as it may be that the removal of the top cover indicates that the top bearings and seals are now so corroded that there is no need to remove them.

11. If further investigation is called for to properly ascertain the extent of damage to the unit, then the top bearings and seals should be removed. It should be understood that if any seawater has penetrated the MPDU, then these seals and bearings would have to be replaced in any event: this type of machinery does not lend itself to repair. This is because the component parts of bearings, once corroded cannot be refurbished as the roller bearings are fitted with fine tolerances while seals themselves, once disturbed are always replaced as they do not seat properly a second time.

12. It follows that the machinery within the

MPDU may need to be replaced in any event if the SBM is considered suitable for refurbishment. Any corroded items must also be considered as scrap and even if they were removed they should be disposed of as having no value (see photograph numbers 5,6 and 7 at pages 3 to 4 of Ex. PH4).

13. Components that may be considered reusable are the outer chamber and the top cover. The outer chamber is unlikely to be damaged, but in itself has little value as its only function is to contain the MPDU seals.

14. Once the invasive survey has been carried out the easy practical measure to prevent dust and rain entering the unit and to keep it whole for transport to a place of disposal or repair is simply to replace the top cover using a reduced number of securing nuts.

15. It can be seen that the preparatory steps above for access to the top of the MPDU would be required in any event if the SBM was to be repaired. This means that the surrounding bogey arms, piping and other damaged material would have to be removed in irrespective of the survey if RIL chose to repair it. Also, once the MPDU has been surveyed inside there would be no point in replacing the damaged seals or bearings as they would need to be replaced in any event if the SBM proves to be capable of repair. Similarly, there would be no point in replacing the corroded and damaged parts if the decision is made to refurbish the unit because the corroded and damaged parts cannot be reused. Alternatively, if a decision is made that the MPDU is beyond repair, it would be pointless to attempt to restore the damaged items. "

16. After having minutely gone through the three affidavits of Mr. Peter Holloway, it is clear that once the SBM is dismantled, re-assemble is not possible; certain parts of SBM, though repairable and/or

replaceable. The deponent has not stated in unequivocal terms that the damaged SBM, if dismantled, re-assemble is possible. Learned Counsel for the defendants, by inviting our attention to certain observations made by Mr. Peter Holloway, submitted that the invasive survey simply requires that the top of the unit that is held down by number of bolts is removed in order that the seals and bearings inside can be inspected. According to the learned Counsel, the proposed survey is, therefore, both an uncomplicated exercise and routine practice with SBMs around the world. By inviting our attention to para 3 of the third affidavit, it was submitted that one is required to cut away the bogey arms, pipes and damaged steel that prevent clear access to the MPDU top. Thereafter, release the ring of bolts that hold down the top cover and survey top bearing and steal for corrosion and after removing the top bearings, inspect inner chambers and thereafter one can remove lower bearings and seals and inspect for corrosion. Thus, according to the learned Counsel, the aforesaid exercise is necessary to carry out invasive survey/ pressure test for the purpose of assessing the damaged items. In our opinion, it is nothing but oversimplifying the entire matter. One just cannot pick up one sentence from here or there and submit that invasive survey/ pressure test should be allowed to be carried out by defendants. The said exercise may be important for the purpose of defendants, but at the same time, the Court should not lose sight of the interest and prejudice that is likely to be caused to the plaintiffs. It is the specific case of the plaintiffs that once the old SBM is dismantled without the Insurance Company settling their claim, that may likely to cause prejudice to the plaintiffs' case which cannot be overlooked. In fact, the learned Single Judge, in his order, has also observed that the plaintiffs' apprehension that allowing dismantling of old SBM at this stage without Insurance Company settling their claim may cause some prejudice to the plaintiffs in settling their claim with the Insurance Company, cannot be said to be unfounded. As stated above, in none of the three affidavits, Mr. Peter Holloway has specifically stated that once the old SBM is dismantled, it can be put in the same condition prior to dismantling. We, therefore, feel that the direction issued by the learned Single Judge to put the old SBM in the same condition as was prior to dismantling is totally uncalled for and, therefore, the same is required to be set aside.

17. Referring to the question of maintainability of the appeal as raised by the learned Counsel for the

defendants, we may refer to the case law cited by the learned Counsel to substantiate his submission. In the case of Mansukhlal Prabhudas Bhogayata Vs. Jagjivandas Jamnadas Tanna and anr., XXIII(2) GLR 70, the Division Bench of this Court was placed with a situation where in an election petition, the learned Single Judge granted application for inspection of election records which was challenged by way of filing Letters Patent Appeal by contending that the order passed allowing certain documents was 'Judgement' within the meaning of the word 'Judgment' in clause 15 of the Letters Patent. The Division Bench was of the view that "The category in which ancillary proceedings would not amount to 'Judgement' are, for example, cases of orders granting amendment and other orders of procedural character. In the instant case, granting of inspection in accordance with law is a purely procedural matter and, therefore, there cannot be said to be any substantive right of the parties determined merely because instructions for inspection with proper precaution which the learned Judge thought proper have been given in the instant case. Therefore, the order passed by the Hon'ble Judge cannot be said to amount in a 'judgment' within the meaning of the word 'judgment' in clause 15 of the Letters Patent."

18. The Apex Court in the case of Shah Babulal Khimji Vs. JayabenD.Kania and anr., AIR 1981 SC 1786 has clearly ruled as under:

"There is no inconsistency between Section 104 read with O.43 R.1 and the appeals under the Letters Patent and there is nothing to show that the Letters Patent in any way excludes or overrides the application of S. 104 read with O. 43 R.1 or to show that these provisions would not apply to internal appeals within the High Court. Even if it be assumed that Order 43 R.1 does not apply to Letters Patent Appeals, the principles governing these provisions would apply by process of analogy. Having regard to the nature of the orders contemplated in the various clauses of O. 43 R.1, there can be no doubt that these orders purport to decide valuable rights of the parties in ancillary proceedings even though the suit is kept alive and that these orders do possess the attributes or character of finality so as to be judgment within the meaning of Cl. 15 of the Letters Patent and hence appealable to a larger Bench. The concept of the Letters Patent governing only the internal appeals in the High Courts and the code of Civil Procedure having no

application to such appeals is based on a serious misconception of the legal position."

It is further observed that:

"Whenever a Trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent. Every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

In order to determine whether an order passed by a trial Judge can be said to be a 'Judgment', the following considerations must prevail with the Court:

That the Trial Judge being a senior Court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the Trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment; otherwise, the appellate Court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge. The courts must give sufficient allowance to the Trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice. That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

The aforesaid guidelines of the Apex Court are sufficient for us to hold that the impugned order against which the present appeal is preferred is maintainable which, in our opinion, decides the controversy which affects the valuable rights of the plaintiffs and,

therefore, the impugned order must be treated to be a 'Judgment' within the meaning of Letters Patent. As observed earlier, by ordering dismantling old SBM, it is likely to cause prejudice in settling the claim with the Insurance Company. There is no dispute to the fact that the plaintiffs have already filed two suits being Special Civil Suit No. 414 of 1999 and 455 of 1999 against New India Assurance Company, Oriental Insurance Company and United Insurance Company Ltd. claiming damages and the said suits are pending in the Court of learned Civil Judge, (Senior Division), Surat. As observed by the learned Single Judge, if the SBM is allowed to be dismantled, the plaintiffs will not be in a position to establish their claim in the pending suits. It may be stated that both Insurance Companies are not parties to the present appeal. It appears that the Insurance Company had filed two applications, one for intervention in the present proceedings and another for inspection. The second application came to be withdrawn. We had, in fact, called upon the learned Counsel appearing for the Oriental Insurance Company to make a statement before us as to whether the Insurance Company is in a position to state that they will not raise any objection if the old SBM is allowed to be dismantled. The learned Counsel, after taking instructions from the concerned Solicitors, made a statement which, in our opinion, was quite ambiguous. Therefore, we left the matter at that stage. In any case, the parties are required to lead appropriate evidence in the pending suits for establishing their rival claims. Unless and until the parties prove their respective case, it is neither desirable nor appropriate at interlocutory stage to order dismantling of old SBM.

19. The Apex Court in Babulal's case (supra) has given clear guidelines and in view of this, in our opinion, this appeal is maintainable. The decision of this Court in Mansukhlal's case may not be applicable in the present case. In any case, the judgment of the Apex Court in Babulal's case whichis later in point of time and having binding effect will prevail.

20. In view of the aforesaid discussion, we are of the opinion that the order passed by the learned Single Judge is required to be interfered with as far as the directions to dismantle the old SBM and to put it to the same condition as was prior to dismantling is concerned. We accordingly allow the appeal and set aside the said directions and hold that till the parties establish their case in the pending suits, no dismantle of the old SBM shall be effected. Considering the facts and circumstances of the case, we expedite the hearing of

pending suits. The parties to give their fullest cooperation for early disposal of the suits.

20. In the result, the appeal succeeds and is allowed with no order as to costs.

(Kshitij R.Vyas,J.)

(K.S.Jhaveri,J.)

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